

Appl. No. 10/780,935  
Amdt. dated September 26, 2005  
Reply to Office action of June 28, 2005

### REMARKS/ARGUMENTS

Claims 1, 2, 4, 5 and 7-20 as set forth in the Amendment B filed March 2, 2005 are presently pending in the application.

In this amendment, Claims 1, 15 and 20 have been amended.

Claims 2, 3 and 6 were previously canceled without prejudice to filing a continuation with respect thereto.

Claim 7 has been canceled without prejudice to filing a continuation with respect thereto.

Claims 4, 5, 6, 1-14, and 16-19 remain unchanged.

Applicant appreciates the Examiner's time spent during the interview on Wednesday, September 21, 2005. During this interview, independent Claims 1, 15, and 20 were discussed in light of FR 2768018 to Chamoulaud and US 4617198 to Overturf. No agreement was reached regarding the claims. As set forth below, the Claims as presented herein are believed to be in condition for allowance. Reconsideration of the Application and issuance of a Notice of Allowability are respectfully requested.

The description has been amended on page 7 (in the paragraph spanning pages 6 and 7) to correct a typographical error that was not previously noted.

#### **Claims 15, 16 and 18**

The Examiner rejected Claims 15, 16 and 18 under 35 U.S.C. §102(b) as being anticipated by FR 2768018 to Chamoulaud. Claim 15 is a method claim directed to one

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method of producing Applicant's mulch carpet. As currently set forth, Claim 15 provides that the method "consists of" the steps of (1) providing a rubber base material; (2) providing a mulch-like material made from shredded rubber tires having the appearance of natural wood mulch; and (3) bonding the mulch like material to the base material without the use of glue.

Chamoulaud discloses a multi-step method for making his mat. As set forth at page 5 of the translation provided by the Examiner, Chamoulaud's method includes (1) selecting fragments of materials; (2) impregnating the materials with glue and optionally a pigment; (3) depositing a waterproof plastic film on a flat plane surface; (4) covering the film with a non-degradable water-permeable layer; (5) spreading the glue impregnated materials on the water permeable layer; and (6) drying and activating the glue via ventilation or heating.

Chamoulaud does not disclose a method that "consists" of Applicant's three steps as noted above. In fact, because Chamoulaud's method requires the use of glue, it is substantially different from Applicant's method. Because Chamoulaud does not disclose a method as set forth in Claim 15, Applicant respectfully asserts that Chamoulaud does not anticipate the method of Claim 15. Claims 16 and 18 depend from Claim 15 and similarly are not anticipated by Chamoulaud.

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**Claims 1, 2, 4, 5, 7-14, 17 and 19**

The Examiner rejected Claims 1, 2, 4, 5, 7-14, 17 and 19 under 35 U.S.C. §103 as being obvious over Chamoulaud. Claim 1 is a product claim directed to Applicant's mulch carpet. Claim 1 as now set forth provides that Applicant's mulch carpet is consists of a porous rubber base, an artificial mulch like material having the appearance of natural wood mulch and being made from shredded rubber tires; wherein the mulch material is bonded to the base material without the use of glue and only along a lower surface of the mulch material so that the upper portion of the mulch material remains exposed.

Chamoulaud discloses that his layer upon which the glued particles are deposited is made from a polypropylene and that the glued materials are plastic or glass. More importantly, Chamoulaud only discloses the use of glue to adhere the materials to the polypropylene layer, and that these materials or particles are impregnated with glue.

Because Chamoulaud teaches only that the particles are impregnated with glue and then adhered to the polypropylene layer by activation of the glue, Applicant respectfully asserts that Chamoulaud does not teach or suggest the invention claimed in Claim 1. Claim 1 is thus believed to be allowable over Chamoulaud.

Claims 2, 3, 5, and 8-14 depend from Claim 1 and are similarly believed to be allowable over Chamoulaud.

Claims 17 and 19 depend from Claim 15. Claim 15 is discussed above. Specifically, Chamoulaud does not teach or suggest the method as now set forth in Claim

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15. Claims 17 and 19 incorporate the subject matter of Claim 15 and are thus not made obvious by Chamoulaud.

#### **Claims 4 and 20**

The Examiner rejected Claims 4 and 20 under 35 U.S.C. §103 as being unpatentable over Chamoulaud in view of Overturf. Claim 20 is an independent claim directed to a method of making Applicant's mulch carpet. Claim 4 depends from Claim 20.

As amended, Claim 20 provides that Applicant's method "consists of" the steps of (1) providing a flexible, porous rubber base material; (2) applying a layer of adhesive on the base material; and (3) applying a layer of mulch-like material on the adhesive to adhere the mulch material to the base layer. The mulch like material is noted to be made from shredded rubber tires.

Chamoulaud's method is discussed above. As noted, Chamoulaud's method includes laying down a water-proof mat upon which the water permeable layer is set and impregnating the material with glue. Applicant's method as set forth does not include these steps, and in fact, excludes these steps. Overturf discloses a method of making roofing material. The method disclosed by Overturf includes (1) providing a strip formed from a suitable base with an asphalt coating; (2) heating or cooling the strip as necessary to bring the asphalt coating to a proper temperature; (3) depositing aluminum chips on the asphalt coating; (4) pressing the chips into the asphalt coating; and (5) blowing excess chips off the asphalt coating.

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Applicant initially notes that Overturf does not disclose a step of applying a layer of adhesive on the upper surface of the base layer. Rather, the Overturf roofing material appears to use a precoated strip. Further, Applicant respectfully traverses the Examiner's assertion that asphalt is an adhesive.

For at least the noted reasons, neither Chamoulaud nor Overturf, considered individually or in combination, teach or suggest the method of Claim 20. Claim 20 is thus believed to be in condition for allowance.

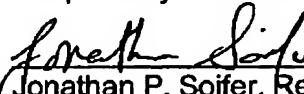
Claim 4 depends from Claim 20 and is believed to be allowable for the same reasons set forth above in conjunction with Claim 20.

#### Conclusion

In view of the foregoing, Claims 1, 4, 5 and 8-20 are believed to be in condition for allowance. A Notice of Allowability with respect to these claims is thus respectfully requested.

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Respectfully Submitted,

  
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